

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>NIKOLAUS AND REGINE PFUSTERSCHMID,</p> <p>v.</p> <p>Respondent:</p> <p>SAN MIGUEL COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 57660</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 27, 2011, Sondra W. Mericer and Diane M. DeVries presiding. Petitioners were represented by Raymond Bowers, Agent. Respondent was represented by Rebekah King, Esq. Petitioners are requesting a residential classification for the subject property for tax year 2008.

Subject property is described as follows:

**Tract 45, Wilson Mesa Ranches, Telluride, Colorado
San Miguel County Schedule No. R1060060368**

The subject property consists of a 7.03 acre parcel within Wilson Mesa Ranches Subdivision. The subject property is predominately wooded in spruce and aspen trees and has several small areas of open meadow.

There are four parcels under common ownership (tracts 44-47). Respondent assigned a vacant land classification to the subject tract 45 for tax year 2008 and residential classification to the remaining tracts. Petitioners are requesting a residential classification for subject tract 45 arguing that it is integral to the main residence.

Raymond Bowers, Agent for Petitioners, testified that tracts 44, 45, 46, and 47 are under common ownership by Petitioners. Tract 44 was purchased by Petitioners in 1993 and has a small house and outhouse on the parcel. Tract 45 was purchased in 1991 and has a well, trail/driveway, spring and pond. Tract 46 was purchased in 1990 and is the site where the main residence is located.

Tract 47 was purchased in 1987 and has a well, storage shed, parking area, pond, and driveway to the main residence. Three of the four parcels are classified as residential (tracts 44, 46, and 47) and the subject parcel (tract 45) is classified as vacant land for tax year 2008.

Mr. Bowers testified as to the amenities on tract 45. There is a well and a pump to service main residence and arboretum, trail/driveway to get access to walking trails and to small house on tract 44, historical fences, a small man-made pond and a spring to supply water to residential land on tract 44.

Mr. Bowers stated that the owners use tract 45 for their comfort, convenience and enjoyment. There are historical fences and a corral on tracts 45 and 47.

Guy T. Poulin, Certified Residential Appraiser, testified that there is a 50 foot horse and walking path easement between tract 45 and tract 47. There are no adjudicated water rights on tract 45.

Mr. Poulin testified that there is no access to tract 44 from Wilson Mesa Road. Tract 45 is heavily treed with a steep incline and also does not have access from Wilson Mesa Road. Access to tract 44 and 45 is from tracts 46 and 47.

Pursuant to the Colorado Constitution, Article X, Section (3)(1)(b), residential real property, including “all residential dwelling units and the land, as defined by law, on which such units are located,” is assessed at a lower rate than other classifications of property. Colorado statutes define “residential real property” as “residential land and residential improvements.” Section 39-1-102(14.5), C.R.S.

“Residential land” means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified The term also does not include land underlying a residential improvement located on agricultural land.

Section 39-1-102(14.4), C.R.S.

“Residential improvements” means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family or families. The term also includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use.

Section 39-1-102(14.3), C.R.S.

The Board determined that the easement on the subject property enables the use of the 50 foot portion of the parcel for walking and horse trails. Petitioners own the land and use the land as a unit in conjunction with the residential improvements. Based on the above referenced cites, the Board determined that the subject tract 45 is an integral part of the main residence tract and should be assessed at the residential assessment rate.

ORDER:

Respondent is ordered to reclassify the subject property to residential for tax year 2008 and change the assessment rate accordingly.

The San Miguel County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

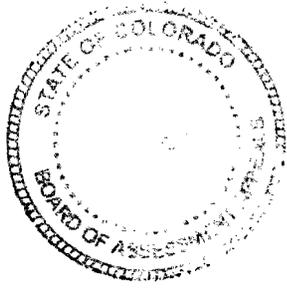
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 23rd day of November, 2011.



BOARD OF ASSESSMENT APPEALS

Sondra W Mercier

Sondra W. Mercier

Diane M DeVries

Diane M. DeVries

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Milla Crichton

Milla Crichton